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Ontario. Consolidated Hearings Act, 1981.

CH-90-11

DECISION AND REASONS FOR DECISION. PURSUANT TO THE
CONSOLIDATED HEARINGS ACT, S.O. 1981, A JOINT BOARD
HEARING WAS HELD TO CONSIDER THE FOLLOWING APPEALS...
1991.

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The Joint Board THE CONSOLIDATED HEARINGS ACT, 1981

CH-90-11

DECISION AND REASONS FOR DECISION

Pursuant to the *Consolidated Hearings Act, S.O. 1981*, a joint board hearing was held to consider the following appeals: the Niagara Escarpment Commission appeals a decision of the Grey County Planning Approval Committee whereby the Committee granted an application by **Rocksprings Enterprises Limited** for consent to sever a 0.84 hectare lot from Part of Lot 16, Concession 10, in the Township of Sydenham; and, Rocksprings Enterprises appeals the Niagara Escarpment Commission's refusal to issue a Development Permit for the construction of a single family dwelling, a private sewage disposal system, and a driveway, on the 0.84 hectare (2 acre) proposed lot.

BEFORE:	M.E. Johnson	-	Chairman
	J.G. Robb	-	Member

DATED at TORONTO this 13TH DAY of SEPTEMBER, 1991

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IN THE MATTER OF Sections 2 and 3 of the *Consolidated Hearings Act*, S.O. 1981, as amended;

- and -

IN THE MATTER OF Section 52(7) of the *Planning Act*, S.O. 1983, as amended;

- and -

IN THE MATTER OF an appeal by the Niagara Escarpment Commission from a decision of the Grey County Planning Approval Committee whereby the Committee granted an application numbered B1186/89 by Rocksprings Enterprises, subject to conditions, for lands comprised of Part of Lot 16, Concession 10, in the Township of Sydenham: OMB File No. C8901001;

- and -

IN THE MATTER OF Section 25 of the *Niagara Escarpment Planning and Development Act*, R.S.O. 1980;

- and -

IN THE MATTER OF an appeal by Rocksprings Enterprises from a decision of the Niagara Escarpment Commission, whereby the Commission refused an application numbered G/R/90-91/30 to permit the construction of a single family dwelling, a private sewage disposal system, and a driveway, on a 0.84 hectare (2 acre) proposed lot.

BEFORE:	M.E. Johnson	-	Chairman
	J.G. Robb	-	Member

TABLE OF CONTENTS

	<u>Page No.</u>
Appearances	2
Witnesses	2
Reasons for Decision	2
Background	2
Compliance with the Niagara Escarpment Plan	4
New Lot Creation Policies	4
Severance and Development Potential Transfers	5
Scenic Values and Open Landscape Character	5
Compliance with Ontario Food Land Guidelines	7
Local Planning Matters	8
Planning Act Matters	8
Summary	9
Decision	10
Exhibit List - Schedule "A"	11

APPEARANCES:

Mrs. Shirley Price	-	Owner/Manager Rocksprings Enterprises Ltd.
Ms. Ramani Nadarajah	-	Counsel for the Niagara Escarpment Commission

WITNESSES:

Mr. Russell McCutcheon	-	Township of Sydenham Reeve
Mr. Rick Watt	-	Niagara Escarpment Commission Planner
Mr. Jim Van Osch	-	Ministry of Agriculture and Food Land Use Specialist
Mrs. Shirley Price	-	as above

REASONS FOR DECISION

Background

Rocksprings Enterprises Limited (Rocksprings), the owner of a 169 acre property, applied to the Grey County Planning Approval Committee for consent to sever a 0.84 hectare (2 acre) lot from their property. Rocksprings also applied to the Niagara Escarpment Commission (NEC) for a Development Permit to construct a single family dwelling, a private sewage disposal system and a driveway on the proposed lot.

The property subject of these applications is located in the north half of Township Lot 16, Concession 10 in the Township of Sydenham. The proposed lot is located within the Niagara Escarpment Planning Area, and therefore the *Niagara Escarpment Planning and Development Act*, R.S.O. 1980 and the Niagara Escarpment Plan are applicable.

Although the Grey County Planning Approval Committee granted the consent to sever, the NEC declined the application for a Development Permit. The NEC appealed the decision of the Planning Approval Committee to the Ontario Municipal Board (OMB) and Rocksprings appealed the NEC's Development Permit refusal to the Minister of the Environment.

Pursuant to the *Consolidated Hearings Act, S.O. 1981*, the appeals were considered together at a joint board hearing. The hearing was held on Monday, May 13, 1991 in the Township of Sydenham Municipal Building.

Mrs. Price, an owner/manager of Rocksprings Enterprises Limited, spoke on behalf of Rocksprings at the hearing. Mrs. Price was supported in her appeal by Russell McCutcheon who is the Reeve of Sydenham Township. A planner with the NEC and a Land Use Specialist with the Ministry of Agriculture and Food (OMAF) gave evidence in opposition to the severance and development proposed by Rocksprings.

Mrs. Price stated that Rocksprings operates a Kampers of America (KOA) campground franchise on the subject property that consists of approximately 100 camp sites and an investment of over half a million dollars. One of the conditions of the KOA franchise is that Rocksprings "must supply the amenities that today's tourist requires". The franchise is due for renewal next year and additional investment is required to develop the site to KOA amenity standards. The sale of two previously severed lots on the subject property financed the construction of a swimming pool and other campground amenities on a portion of the property that is in the Escarpment Protection Area. According to Mrs. Price, the proceeds of the sale of the proposed lot would be used to fund further improvements to the campground.

The Joint Board is guided in its deliberations by the planning matters outlined in: the *Niagara Escarpment Planning and Development Act* (NEPDA); Subsection 50(4) of the *Planning Act, S.O. 1983*; and the Niagara Escarpment Plan (NEP). The Joint Board has utilized the evidence given at the hearing and the relevant legislation to determine:

- i) whether the requested severance should be granted;
- ii) whether a development permit should be granted for the construction of a single family dwelling, a private sewage disposal system and a driveway on the proposed lot; and
- iii) whether any terms and/or conditions should be imposed on these applications, and if so, the provision of such terms and conditions.

Compliance with the NEPDA and the Niagara Escarpment Plan

The NEC planner, Mr. Watt, explained to the Board through evidence that the Rocksprings property is located in the Niagara Escarpment Planning Area and the proposed lot has an Escarpment Rural Area designation. The NEPDA and its associated planning document, the NEP, form the basis for the NEC's development control function within the Niagara Escarpment Planning Area. These facts were not disputed by the parties.

The stated purpose of the NEPDA is:

to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with the natural environment.

The NEP was approved by the Ontario Cabinet on June 12, 1985 as a framework of planning policies and objectives designed to conserve the Escarpment's unique landscape. The Plan integrates environmental protection, food land conservation, heritage preservation and community development into the land-use planning and decision-making process. Regional and local official plans are subordinate to the NEP within the Niagara Escarpment Planning Area.

The hearing reviewed issues concerning the compliance of the proposed severance and development with the NEPDA and the policies and objectives of the NEP. The relevant issues included: interpretation of the New Lot Creation Policies of the NEP; Severance and Development Potential Transfers; Scenic Values and Maintenance of the Open Landscape; the Ontario Food Land Guidelines; Local Planning Matters; and, *Planning Act* Matters.

New Lot Creation Policies of the NEP

Condition 3 of the New Lots Policies (NEP, page 11) for Escarpment Rural Areas states:

Where no lots have ever been severed in the past, and where lots to be created are not in conflict with the Food Land Guidelines, two new lots may be severed for permitted uses per original township lot (generally 40 hectares) or half-lot where the original township lot is 80 hectares (200 acres)...

Mr. Watt testified that the NEC objected to the severance and denied the development permit under this New Lot Creation Policy because the application requested a third severance on a 100 acre half lot already containing the maximum of two severed properties. The Rocksprings' lands, comprising 169 acres, are configured so that 100 acres are located within north half Lot 16 and an adjacent 69 acres are located within south half Lot 17. The 69 acre parcel does not have any frontage on a maintained road. NEP section 2.4, subsection 10 states:

New Lots created by consent shall front onto an existing public road which is of reasonable standard of construction and generally maintained all year round.

Therefore, the Rocksprings' acreage in south half Lot 17 is unable to qualify for a severance although pursuant to condition 3 of the New Lots policy one additional severance could be available within the 169 acre property. Mrs. Price maintains that the severance and development potential of the 69 acre parcel that is without road access should be transferred to north half Lot 16 which has available road frontage.

Severance and Development Potential Transfers Between Adjoining Lots

According to Mr. Watt, the NEPDA and the NEP do not have provisions for the development density transfer requested by Mrs. Price. He stated that an amendment to the Niagara Escarpment Plan would be necessary to transfer the severance and development potential from the acreage that is without road access to the adjacent 100 acre lot which has road frontage. In response to a query from the Board, Mr. Watt was able to cite an amendment to the NEP that was adopted to permit a similar transfer of development densities for a parcel in Euphrasia Township (the Duncan Lake property).

Scenic Values and Open Landscape Character

Section 1.5 of the NEP lists several objectives for land-use planning within the Escarpment Rural Area. Two of these objectives are:

To maintain scenic values of lands in the vicinity of the Niagara Escarpment.

To maintain the open landscape character.

Mr. Watt's professional opinion was that in view of the intent of the NEP and the NEPDA he could not support the increase in density required to develop a third residential lot along the road frontage of the 100 acre parcel. He showed the Board photographs of the road frontage of the subject property. These photos reveal a pleasing escarpment rural landscape that is punctuated by two large suburban style homes on open turfed lots near the road.

The development permits issued for the two existing homes were granted with standard Conditions of Approval. These Conditions of Approval often involve landscaping plans aimed at minimizing the visual impact of constructing new structures in a heritage landscape. The photographs and the evidence presented by Mr. Watt indicate that the landscaping around these previous developments is not very effective in reducing the stark contrast between the modern suburban style homes and the Escarpment landscape.

Since maintaining scenic values and the open landscape are important objectives of the NEP, the Board believes that closer attention should be paid to the application of architectural designs and landscaping plans that are compatible with these objectives. The use of less contemporary architectural designs; the retention of, and capitalization on, the natural lie of the land; and the creative planting of native trees, shrubs and wildflowers, could significantly reduce the visual incongruity between new developments and the historic rural landscape.

In response to questions from the Board, Mr. Watt indicated that compliance with landscaping Conditions of Approval was difficult to monitor and enforce due to staffing and resource limitations at the NEC.

As the photographic exhibit indicated, the cumulative impact of small developments occurring in the Niagara Escarpment area can have serious implications for the objectives of maintaining an open and scenic rural/natural landscape. Considered in isolation, the visual impact of one additional severed lot is small, however, the cumulative impact of many small impacts can quickly become significant.

According to the NEP, the Niagara Escarpment supports one of the province's prime outdoor recreation and tourism areas. The Escarpment is also the source of many of southern Ontario's prime streams and rivers. Ineffective regulation of development could reduce the Escarpment's ability to sustain these benefits.

Compliance with Ontario Food Land Guidelines

The Joint Board also heard from Jim Van Osch who is a Land Use Specialist with the Ministry of Agriculture and Food (OMAF). He was called by counsel for the NEC. Based on soil inventory maps and a visit to the subject property, Mr. Van Osch characterized the subject lands as relatively level and with few limitations for agriculture.

In the view of this witness, the subject property is part of a larger agricultural area that is producing hay, pasture, grain and beef cattle. Exhibit 2.2 was identified by Mr. Van Osch as a copy of an OMAF consent commenting form that was filed with the Grey County Planning Approval Committee to assist in the review of the Rocksprings' application for consent to sever. The consent commenting form objected to the proposed severance for the following reasons: an incompatible use would be created in a predominantly agricultural area; the proposed lot is located on lands shown as Class 1, 2, 3, or 4 by the Canada Land Inventory; and, the consent does not appear to be farm related in nature. Mr. Van Osch supported these objections and detailed their basis in the policies of the Ontario Food Land Guidelines.

Mr. Van Osch cited several sections of the Ontario Food Land Guidelines to illustrate OMAF's concerns regarding residential developments in agricultural areas. Two of these concerns are: the importance of preserving agricultural lands for future food production; and, the potential for conflicts occasioned by non-farm residential uses in an agricultural community. In response to questions from the Board, Mr. Van Osch gave evidence that the growth of rural estate development is resulting in growing conflict in rural areas. However, he did not cite specific examples of such conflicts in the vicinity of the subject lands.

Mrs. Price responded to Mr. Van Osch's submissions by indicating that farming was ceased on the subject lands because it was not profitable. Although the Board is inclined to accept this submission by Mrs. Price, the New Lots policies of the NEP direct the Board to consider the Ontario Food Land Guidelines.

Further evidence given by Mrs. Price indicates that Rocksprings is a responsible Escarpment landholder that wants to promote its property as a "tourist destination area". According to Mrs. Price, Rocksprings is co-operating with the Ontario Ministry of Natural Resources to manage a recently reforested portion of the property and to protect a fish sanctuary in a

stream running through the property. Mrs. Price also indicated that Rocksprings had "protected the Niagara Escarpment proper by seeing that it gets into the hands of the Bruce Trail Association." The Board agrees with Mrs. Price's submission that the use of the Rocksprings' property for outdoor recreation, fisheries protection, silviculture and natural environment preservation is a very productive land use.

Local Planning Matters

Mr. Watt stated that the City of Owen Sound had recently annexed a several hundred acre land parcel immediately west of the Township Road that forms the western boundary of the Rocksprings property. Although these lands to the west of the Rocksprings property have an Escarpment Rural Area designation, Mrs. Price expressed a concern that Rocksprings could become surrounded by housing development.

Mr. Watt informed the Board that the Grey-Owen Sound Official Plan has not as yet been brought into conformity with the NEP. To ensure that the NEP policies are paramount in local planning decisions, a Minister's Order was issued in 1990. This Minister's order suspends the local plan's effect on lands and policies within the Niagara Escarpment Planning Area.

Although the County was not represented at the hearing, Sydenham Township Reeve McCutcheon praised the Rocksprings campground as providing an important service.

Planning Act Matters

Section 50 (4) of the *Planning Act* outlines matters that are to be regarded when considering a draft plan of subdivision or a consent to sever. Among these matters are: matters of provincial interest as stated in Section 2 of the *Act*; the welfare of the present and future inhabitants of the local municipality; whether the severance is in the public interest; the ability of the severance to conform to the provisions of the Niagara Escarpment Plan; the suitability of the land for the purpose for which it is proposed to be severed; and, the conservation of natural resources.

The matters raised by Section 50(4) are addressed by the hearing evidence. The evidence brings the Board to the determination that the aforementioned provisions of the *Planning Act* cannot be favourably addressed by the subject application for consent to sever.

Summary

NEP policies balance the interests of present landowners and those wishing to develop homes near the Escarpment with the public interests that may be impacted by the long term and cumulative environmental consequences of individual land use planning decisions. NEP policies are applied to development proposals to ensure that the beauty and productivity of the Niagara Escarpment's natural/rural environment endures beyond the current generation.

The Board was favourably impressed with Mrs. Price's presentation of Rocksprings' case, and sympathizes with her plight. This does not remove the Board's obligation to make its decision based on the evidence and the existing planning guidelines and legislation.

The Joint Board accepts the evidence of the NEC planner that the NEPDA and the NEP do not contain provisions recognizing the transfer of density (severance and development potential) between lots. This finding is one of the strong determinants in the subject appeals. Other relevant issues concerning; the NEP objective to maintain a scenic, open landscape; the application of the Ontario Food Land Guidelines: the avoidance of adverse cumulative impacts; and the consideration of the matters outlined in Section 50(4) of the *Planning Act*, cast further doubt on the wisdom of approving the proposed severance and permitting the intended development.

The Joint Board finds that the Rocksprings' proposal does not comply with the NEPDA, the NEP and Section 50(4) of the *Planning Act*. The request for consent to sever and develop the subject property is therefore denied.

DECISION

The Board allows the appeal of the Niagara Escarpment Commission. The application for consent to sever a 0.84 hectare (2 acre) lot from an existing 68 hectare (169 acre) property is denied.

The Board dismisses Rocksprings' appeal of the refusal by the Niagara Escarpment Commission to issue a development permit for the construction of a single family dwelling, driveway and private sewage system. The application for a Development Permit is denied.

DATED at TORONTO this 13TH DAY of SEPTEMBER, 1991.

"M.E. Johnson"

M.E. Johnson, Chairman

"J.G. Robb"

J.G. Robb, Member

SCHEDULE "A"

EXHIBIT LIST

1. Resolution of Township of Sydenham naming R. McCutcheon as representative of the Township on this severance.
2. Exhibit Book.
 - 2.1 - Application for Consent B1186/89.
 - 2.2 - OMAF Consent Commenting Form B1186.
 - 2.3 - Letter from G.H.U. Bayly, NEC to Margaret Earnest, Grey County. Planning Approval Committee dated September 25, 1989.
 - 2.4 - NEC memo re: Consent Appeal B1186/89.
 - 2.5 - Map #1 and Map #2 of the Subject Lands.
 - 2.6 - Grey County Planning Approval Committee Decision.
 - 2.7 - Application for a Development Permit, received April 11, 1990.
 - 2.8 - Minutes of NEC Meeting - June 14, 1990.
 - 2.9 - Reapplication for a Development Permit, received June 7, 1990.
 - 2.10 - NEP Excerpts.
3. Presentation of Evidence by the Ministry of Agriculture and Food.
 - 3.1 - Curriculum Vitae - Jim Van Osch.
 - 3.2 - Extracts: Ontario Food Land Guidelines.
 - 3.3 - Canada Land Inventory Map: Scale 1:50,000.
 - 3.4 - County of Grey Soils Report and Map: Scale 1:63,360.
4. Conditions of NEC for Development Permit Approval.
5. Photos of the road frontage of the subject property and two past severances and developments.

CA20NCH 91C11

Ontario. Consolidated Hearings Act, 198
CH-90-11

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CONSOLIDATED HEARINGS ACT, S.O. 1981, A
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1991.

**RESOURCE CENTRE
INST. FOR ENVIRON'L. STUDIES
UNIVERSITY OF TORONTO**



